***THE HON'BLE MS. JUSTICE G.ROHINI**

+WRIT PETITION NO.16315 OF 2005

% 14/09/2005

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1. Arji Sankara Rao, S/o. Late Narasimhulu,
   Aged about 50 years, R/o. Saiganesh Apartment,
   E-2 Abid Nagar, Akkayyapalem, Visakhapatnam
   And two others. … Petitioners

Vs.

$1. Govt. of A.P., rep. by Secretary, Prohibition &
   Excise Department, Secretariat, Hyderabad,
   And others. … Respondents

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> Head Note

! Counsel for the petitioners : Sri Vedula Venkataramana

^ Counsel for the respondents 1 to 3: G.P. for Proh. & Excise

Counsel for the respondent Nos. 5 to 9: Sri E.Madanmohan Rao

Cases Referred :

1980 (2) APLJ 399 (D.B.)

[2] (2004) 11 Supreme Court Cases 1

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.16315 OF 2005

Dated: 14th September, 2005.

Between:

1.Arji Sankara Rao, S/o. Late Narasimhulu,

Aged about 50 years, R/o. Saiganesh Apartment,

E-2 Abid Nagar, Akkayyapalem, Visakhapatnam

And two others. … Petitioners

And

1. Govt. of A.P., rep. by Secretary, Prohibition &

Excise Department, Secretariat, Hyderabad,

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WRIT PETITION NO.16315 OF 2005

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ORDER :

The writ petitioners claim to be the residents of Visakhapatnam town who are interested in obtaining licence for sale of Liquor in retail.

As per the provisions of A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005, the 2nd respondent – Commissioner of

Prohibition & Excise, vide proceedings dated 25-5-2005, fixed the number of licences to be granted in Visakhapatnam District for the year 2005-2006, duly specifying the areas/localities. In pursuance thereof, Notification dated 26-5-2005 was issued by the District Collector, Visakhapatnam, inviting tenders from the intending tenderers for grant of lease for a period of one year i.e, from 1-7-2005 to 30-6-2006, specifically mentioning that the lease of right to sell Indian Liquor and Foreign Liquor by shop as specified in the list appended to the said Notification will be auctioned through sealed tenders on 2-6-2005 as per the terms and conditions specified thereunder. So far as the Visakhapatnam Municipal Corporation is concerned, 51 leases were proposed to be granted by auction through sealed tenders. In Annexure-I to the Notification, the area/locality wherein the said leases were proposed to be granted together with respective upset prices were mentioned.

It is not in dispute that in the said Notification, dated 26-5-2005, no Shops were earmarked / allocated insofar as Ward Nos.6, 19, 30 and 31 of the Visakhapatnam Municipal Corporation are concerned. It is also not in dispute that so far as the shops in other wards which were identified and earmarked for grant of leases, the auctions were conducted as per the schedule and leases were granted to the respective successful bidders.

While so, it appears that 29 such auction purchasers from different Districts in the State including the respondents 5 to 9 herein who are the auction purchasers from Visakhapatnam Municipal Corporation, could not secure premises in the notified areas/localities for establishing shops for various reasons and could not obtain licences and consequently they sought permission for establishment of shops in areas/localities other than that were notified.

It is relevant to note that so far as Visakhapatnam Municipal Corporation is concerned, the respondents 5 to 9 herein were initially granted leases by way of auction in respect of shops notified in Ward Nos.8, 15, 17, 37 and 27 respectively. However, on the ground that they could not secure the premises for locating the shops in the said wards i.e., notified areas, they sought permission to establish the shops in Ward Nos.6, 19, 23, 30 and 31 respectively. It is not in dispute that in Ward

Nos.6, 19, 30 and 31 no shops were earmarked / allocated under the Notification, dated 26-5-2005. Notwithstanding the said fact, the respondents 1 to 4 were taking steps to accord permission to the respondents 5 to 9 for establishing the shops in the wards which were not identified on the ground that the same would be in the interest of the Government revenue. At that stage, the present writ petition has been filed with the following prayer:

> *"… … this Hon'ble Court may be pleased to issue a Writ of Mandamus or any other appropriate writ declaring that the action of the respondents in entertaining and permitting shifting of the existing retail wine shops from Ward Nos.8, 15, 17, 27 and 37 of Visakhapatnam Municipal Corporation, is arbitrary and contrary to the Excise Policy contained in G.O.Ms.No.998, dated 24-5-2005 and consequently direct the respondents to forbear from permitting shifting of the retail wine shops from the identified wards to other wards and further direct the respondents that in case of decision of increasing the number of retail wine shops and permitting fresh shops in Ward Nos.6, 19, 30 and 31, such exercise shall be taken only by way of public auction to enable the interested persons to participate and grant such other relief as it deems fit in the circumstances of the case."*

The respondents 1 to 4 as well as the respondents 5 to 9, who got themselves subsequently impleaded, filed counter-affidavits contesting the writ petition.

I have heard the learned Counsel for both the parties and perused the material on record.

The learned Counsel for the petitioners submits that in the absence of any provision under the A.P. Excise Act or the Rules made thereunder providing for change of area/locality in respect of which the leases were granted, the impugned action of the respondents is arbitrary, illegal and without jurisdiction. The learned Counsel vehemently contends that since under the Notification, dated 26-5-2005, the number of shops as well as the identified wards were also specifically notified, it is not open to the respondents 5 to 9 to establish their shops in the wards in which no shops were notified at all.

The learned Counsel also submits that the writ petitioners were interested in competing for grant of a lease in respect of retail shops in Ward Nos.6, 19, 30 and 31 and had the official respondents notified the shops in the said wards, they would have participated and competed in the auction. He contends that permitting the proposed shifting of the shops from the notified wards to such wards where there was no allotment of shops would amount to clear departure from the mandatory procedure prescribed under the Statute, apart from being arbitrary and violative of Article 14 of the Constitution of India.

On the other hand, the learned Government Pleader for Prohibition & Excise appearing for the respondents 1 to 4 would submit that the action of the respondents 1 to 4 in considering the request of the existing lessees for permitting to shift and establish shops outside the notified area/locality is in the interest of administration and for proper regulation of Liquor trade and such discretion exercised by the Commissioner of Prohibition & Excise for shifting the shops does not warrant interference. The learned Government Pleader also contended that such shifting is permissible in view of the relaxation granted by the Government in exercise of powers conferred under Section 68-B of The A.P. Excise Act, 1968, which empowers the Government to make exemptions or grant relaxations in respect of any provisions of the Act and the Rules.

The learned Counsel for the respondents 5 to 9 at the outset raised an objection as to the maintainability of the writ petition contending that the petitioners, who admittedly did not participate in the auction held in pursuance of the Notification dated 26-5-2005, have no *locus standi* to file the writ petition. He also submits that the writ petition itself is premature since the representations of the respondents 5 to 9 for shifting of the shops are still pending consideration and the authorities have not yet taken any decision, and therefore on that ground alone the writ petition is liable to be dismissed in limini.

For proper appreciation of the rival contentions raised by the learned Counsel, it is necessary to note the relevant statutory provisions governing the grant of lease of right to sell Indian Liquor and Foreign Liquor.

In exercise of the powers conferred by Section 72 read with Sections 17, 28 and 29 of the A.P. Excise Act, 1968, and Ordinance 5 of 2005, the Governor of Andhra Pradesh made the Rules called the A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short, 'the Rules'). The said Rules issued under G.O.Rt.No.998, Revenue (Ex.II) Department, dated 24-5-2005, are made applicable for the grant of privilege by shop, conditions governing thereof and transport of Indian Liquor and Foreign Liquor by the leaseholder. Rules 3, 4 and 5 of the said Rules which provide for grant of lease of right to sell Indian Liquor and Foreign Liquor and for establishment of shops run as under :

*"**3. Lease of Right to sell Indian Liquor and Foreign Liquor :***

Subject to the provisions of these rules the grant of lease of right to sell Indian Liquor and Foreign Liquor by shop shall ordinarily be granted by inviting sealed tenders from the public after due notification. The lease shall be for a period of one year or part thereof.

Provided that where the Commissioner considers it expedient to grant the lease of right to sell Indian Liquor and Foreign Liquor by shop in any other manner, he shall for the reasons to be recorded in writing, do so.

4. Establishment of Shops:-

The Commissioner of Proh. & Excise having due regard to requirement, public order, health, safety and other factors as thinks fit, may fix the number of shops to be established in an area/locality before the publication of the Auction Notice under Rule 5.

5. Auction Notice :

(1) Where it is proposed to grant the lease for sale of Indian Liquor and Foreign Liquor by shop a notice of the proposed auction containing the particulars mentioned in sub-rule (2) shall be published, at least (7) seven days in advance of the date of auction, by the Collector of the District in the District Gazette or in such other manner as the Collector may deem fit.

(2) The auction notice shall contain the following particulars :

i. *Serial Number and the name of the area / locality where the shop will be established.*

ii. *The last date, time and place for receipt of tenders;*

iii. *The place of auction with time and date;*

iv. *The conditions governing the auction;*

v. *The lease period and*

vi. *Any other matter which may be considered necessary by the auctioning authority."*

A combined reading of the above Rules makes it clear that the lease of right to sell Indian Liquor and Foreign Liquor by shop shall ordinarily be granted by inviting sealed tenders from the public. Before issuing such auction notice, the Commissioner of Prohibition & Excise has to fix the number of shops to be established in an area/locality. It is also relevant to note that Rule 5 of the Rules specifies the particulars to be mentioned in the auction notice which include the name of the area/locality where the shop will be established.

In the case on hand, it is not in dispute that the 2nd respondent - Commissioner of Prohibition & Excise, having considered the requirement of the localities and other relevant factors, issued the proceedings dated 25-5-2005 fixing the number of shops to be established. In the said proceedings, he has clearly identified the areas/localities where the said shops are to be established. So far as the Visakhapatnam Municipal Corporation is concerned, the areas were identified ward-wise specifying the number of shops in each ward. On the basis of the said proceedings, dated 25-5-2005, the District Collector issued the Auction Notification, dated 26-5-2005, inviting sealed tenders from the public for grant of leases ward-wise in the Visakhapatnam Municipal Corporation. Admittedly, the auction was conducted as per the schedule and the leases were granted in respect of each ward specified in the auction notification. It is not in dispute that the respondents 5 to 9, having been declared as highest bidders in the auction held in pursuance of the Notification, dated 26-5-2005, were granted lease of right to sell Indian Liquor and Foreign Liquor by shop in Ward Nos.8, 15, 17, 37 and 27 respectively. However, for various reasons, they could not establish the shops in the said wards and consequently no licences could be granted in their favour. In the circumstances, they sought permission to establish their shops in Ward Nos.6,19, 30 and 31 respectively, which were admittedly not identified nor notified by the 2nd respondent

for grant of lease of right to sell Foreign Liquor and Indian Liquor by shop. May be that, the respondents 5 to 9 were unable to establish the shops in the wards in respect of which they were granted leases, however the question is whether they can be permitted to establish the shops in the wards i.e., areas/localities which were not identified by the Commissioner for locating the shops for sale of Indian Liquor and Foreign Liquor.

Under Rule 4 of the Rules, the Commissioner has to fix the number of shops to be established with particular reference to a particular area or locality having due regard to the requirement, public order, health, safety and other factors. In exercise of the said power, the 2nd respondent - Commissioner, under his proceedings, dated 25-5-2005, having fixed the number of shops to be established in the Municipal Corporation of Visakhapatnam in the specified wards, did not choose to include Ward Nos.6, 19, 30 and 31. As expressed above, on a combined reading of Rules 3, 4 and 5, it is clear that the lease of right to sell Indian Liquor and Foreign Liquor by shop by way of public auction can be granted only in respect of the shops fixed by the Commissioner of Prohibition & Excise in the particular area/locality identified by him and in no other area/locality.

It is true that under the proviso to Rule 3, it is open to the Commissioner of Prohibition & Excise to grant the lease of right to sell Indian Liquor and Foreign Liquor by shop in any other manner for the reasons to be recorded in writing. However, since the 2nd respondent - Commissioner has already exercised such option and thought it fit to grant the leases in Visakhapatnam Municipal Corporation by public auction and implemented the same, the learned Counsel for the petitioners submits that the power under the proviso to Rule 3 is no more available to him.

However, the learned Counsel for the respondents 5 to 9 contended that since the Notification dated 26-5-2005 did not deal with Ward Nos.6, 19, 30 and 31, it cannot be said that the Commissioner has already exercised the option insofar as the said wards are concerned and therefore it is permissible to grant the leases in respect of the said wards in a manner other than by public auction under the proviso to Rule 3. Even assuming that the power under the proviso to Rule 3 is still available

to the 2nd respondent and as such he is entitled to grant the lease in respect of ward Nos.6, 19, 30 and 31 in a manner other than by public auction, I am of the view that the same cannot be done by permitting the lessees, who were already granted leases in respect of other areas, to establish the shops since Rule 3 provides only for fresh grant of lease. Admittedly, what was permitted under the impugned proceedings was ***change of area/locality notified in the District Gazette***, but not grant of fresh lease by adopting the alternative manner in exercise of the power under the proviso to Rule 3. The learned Government Pleader does not dispute the same, but made an attempt to justify the impugned action by tracing the power to Rule 29 of the Rules.

For ready reference, Rule 29 of The Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 is extracted hereunder :

29.Sale permitted at the licensed premises only :-

1. *The leaseholder shall sell the liquor only at the premises specified in the licence.*

2. *No change or alteration of the licensed premises shall be made nor the licensed premises shifted elsewhere.*

3. *Shifting of the licensed premises may be permitted for valid reasons and subject to conditions as may be specified by the Commissioner of Proh. & Excise within the* ***same area/locality*** *where it was originally established subject to payment of Rs.10,000/- as fee."*

The above Rule apparently provides for shifting of the licensed premises. Admittedly, in the case on hand, the respondents 5 to 9 have not yet secured the premises and licences have not yet been sanctioned in their favour and therefore the question of shifting of the licensed premises does not arise at all. At any rate, even under Rule 29 (3) of the Rules, the shifting of the licensed premises is permissible only within the same area/locality where it was originally established. Hence, shifting of the proposed shops from the wards where the respondents 5 to 9 were originally granted leases to different wards cannot be permitted.

However, the learned Government Pleader submits that in exercise of the power conferred under Section 68-B of the A.P. Excise Act, the 1st respondent granted relaxation in respect of Rule 29 (3) of the Rules and therefore shifting of the licensed premises even beyond the area/locality where it was originally established is permissible.

Section 68-B which has been inserted into A.P. Excise Act, 1968 by A.P. Ordinance No.5 of 2005 runs as under:

> ***"68-B. Power of State Government to notify exemptions or grant relaxations :-***
>
> *The State Government may by notification in the A.P. Gazette and subject to such restrictions and conditions as may be specified in such notification, may exemption or grant relaxation in respect of any of the provisions of the Act."*

Though there can be no dispute about the power conferred on the 1st respondent for granting exemptions and relaxations in respect of any of the provisions of the Act. As expressed above, since the respondents 5 to 9 have not yet secured the premises and no licences have yet been sanctioned in their favour, Rule 29 does not come into operation at all. Hence, the permission said to have been granted by the 2nd respondent for change of area/locality notified in the Gazette by virtue of the relaxation granted by the 1st respondent under Section 68-B of the Act under no circumstances can be termed as *'permission to shift the licensed premises'*. In the circumstances, it is inevitable to conclude that the impugned action of the respondents 1 and 2 is nothing but permitting establishment of new shops in places/localities other than the notified areas/localities under the garb of exercise of power under Rule 29. Such action being in gross violation of the procedure prescribed under Rules 3, 4 and 5 of the Rules is impermissible and illegal.

The learned Counsel for the respondents 5 to 9 while placing reliance upon the decision of a Division Bench in LOTHUGADDA G T A S CO-OP SOCIETY vs. GOVT. OF A.P. contended that since the writ petitioners at best can be termed as

prospective bidders in respect of Ward Nos.6, 19, 30 and 31, they cannot be said to be persons whose legal rights have been affected and therefore even assuming that the impugned action is impermissible, they have no *locus standi* to maintain the writ petition and on that ground alone the writ petition is liable to be dismissed.

It is to be noted that the principle that in order to have the *locus standi* to invoke the jurisdiction under Article 226 of the Constitution of India, the petitioner should be an aggrieved person and he must have a legal right vested in him has undergone a sea-change in recent times. Suffice it to refer to the decision of the Supreme Court in INDIAN BANKS' ASSN. V. DEVKALA CONSULTANCY SERVICE wherein it was held as under:

> *"… … … even where a writ petition has been held to be not entertainable on the ground or otherwise of lack of locus, the court in larger public interest has entertained a writ petition. In an appropriate case, where the petitioner might have moved a court in his private interest and for redressal of his personal grievance, the court in furtherance of public interest may treat it as a necessity to enquire into the state of affairs of the subject of litigation in the interest of justice. Thus, a private interest case can also be treated as public interest case."*

That apart, it is a well settled principle that when a procedure has been laid down, the Statutory Authority must exercise its power only in the manner prescribed. In the case on hand, as expressed above, since evidently the procedure sought to be followed by the respondents 1 and 2 is contrary to the provisions of the Statutory Rules, I am of the view that this is a fit case where the interference of this Court is warranted in exercise of jurisdiction under Article 226 of the Constitution of India.

Hence, the objection raised by the respondents that the petitioners have no *locus* to maintain the writ petition, cannot be accepted. I am also unable to agree with the contention that the writ petition is premature and no cause of action arose for filing the writ petition since the record placed before this Court makes it clear that the proposals submitted by the concerned Excise Superintendent in pursuance of

the request made by the respondents 5 to 9 for establishing the shops in the wards other than which were notified were already processed by the Commissioner of Prohibition & Excise and forwarded to the 1st respondent recommending for such establishment of shops. As a matter of fact, such permission has already been granted in respect of the other 24 lessees who are similarly situated, but deferred so far as the respondents 5 to 9 are concerned in view of the pendency of this writ petition.

For the aforesaid reasons, the Writ Petition is allowed declaring that the action of the respondents 1 to 4 in permitting the respondents 5 to 9 to establish their shops in Ward Nos.6, 19, 30 and 31 of Visakhapatnam Municipal Corporation by permitting change of area/locality notified in the District Gazette, being contrary to the statutory provisions is illegal and impermissible. No costs.

14th September, 2005.

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THE HON'BLE Ms. JUSTICE G. ROHINI

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WRIT PETITION NO.16315 OF 2005

Dated: 14th September, 2005.